THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO No. 365 of 2001.

Date of Decision: 24.10.2005

United India Insurance Co. Ltd. ..Appellant.

Versus.

Smt. Salochana Devi & ors. ..Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr. Tarlok Chauhan, Advocate.**

For the Respondent(s): **Mr. Sanjiv Kuthiala,Advocate for respondents No. 1 to 4.**

Mr. Bimal Gupta, Advocate, for respondent No.5.

Deepak Gupta, J*(Oral).*

This appeal under Section 30 of the Workmen's Compensation Act has been filed against the order passed by the Commissioner under the Workmen's Compensation Act, Nahan in case No.1/95 decided on 30.7.2001/29.8.2001.

The facts which are not in dispute are that the deceased Shiv Kumar was working as cleaner on truck No.HR01B-8066 owned by Om Parkash. The said truck met with an accident on 2.10.1994 and the deceased died on the spot. The claimants who are the mother and sisters of the deceased Shiv Kumar filed a petition under the

Workmen's Compensation Act for the grant of compensation. The Commissioner vide his order dated 30.7.2001 awarded Rs.1,34,400/- as compensation along with interest at the rate of 9% per annum.

I have heard the learned counsel for the parties.

The main ground urged in this appeal is that the Commissioner has erred in applying the provisions of the Workmen's Compensation Act as amended in 1994 to the case in hand. Learned counsel for the Insurance Company contends that the accident had occurred on 2.10.1994 and the rights of the parties fructified on the date of the accident. The amendments giving substantive effect cannot be made retrospective unless the legislation has specifically made them retrospective.

In fact this question virtually stands decided. There are numerous judgments of the Apex Court on this point. The compensation has to be calculated as per the provisions of law as they exist on the date of accident. In the present case the cause of action has arisen from the date when the accident had occurred.

A four- Judge Bench of the Apex Court in **Pratap Narain Singh Deo** v. **Srinivas Sabata** (1976 1 SCC 289) has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim. This judgment was

followed in **Kerala State Electricity Board and another** v. **Valsala K. and another** (1999) 8 SCC 254). The same view has been taken in **Oriental Insurance Co. Ltd**.v. **Khajuni Devi and others** (2002) 10 SCC 567).

This Court has also consistently taken the view that the rights of the parties are governed by the law as it exists on the date of the accident. This view has been taken in **United India Insurance Company Ltd.** v. **Smt. Nako alias Naiku Devi**, 1996 (1) Sim. L.C.370, when it was held as follows:

> "8. We may refer to Maxwell on Interpretation of Statutes, Twelfth Edn. P.215, regarding retrospective operation of statutes in the following terms:
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> > "Upon the presumption that the legislature does not intend that is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary distinct implication."
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> 9. Applying the above settled law of interpretation, we hold that as the accident took place prior to the amendment of the Schedule IV of the Act, the compensation has to be assessed according to un-amended Schedule. We say so as if retrospective

> operation is given to the amended Schedule, it will take away the rights of the parties, namely, the owner as well as the Insurance Company, in this regard. Therefore, the Commissioner erred in law in assessing the compensation under the amended Schedule IV."

To similar effect are also the decisions of this Court in **H.P.State Forest Corporation Ltd**. v. **Ganu Devi and others**, Latest HLJ 2004 (HP) 945 and in **Executive Engineer, B& R, HPPWD, Solan and Anr. v. Kewal Ram,** FAO No. 261 of 2003 decided on 17.7.2004.

This view has also been followed by this Court in FAO No. 252 of 1998 and FAO No. 308 of 1995 decided on 12.5.2005.

In view of the above settled position of law, it is clear that the compensation was payable to the claimants under the provisions of the Workmen's Compensation Act as they existed on 2.10.1994. At the relevant time, the maximum wages which would be taken were Rs.1000/- per month. It is proved on record that the wages were more than Rs. 1000/- and 40% of Rs.1000/- has to be applied by the relevant factor. In this case the relevant factor is 224. Therefore, by multiplying 400 by the relevant factor, the compensation payable works out to Rs.89,600/-.

In view of the above discussion, the order of the Commissioner under the Workmen's Compensation Act, Nahan dated 30.7.2001 is set aside. It is held that the claimants are entitled to

compensation of Rs.89,600/- along with interest @ 6% p.a. from 14.3.1995 i.e. one month after the date of accident till payment/deposit of the said amount. This amount shall include the amount, if any, paid by way of interim relief. The entire amount shall be paid to Smt.Salochana Devi.

The appeal is disposed of in the aforesaid terms with no order as to costs.

CMP No. 813/01.

In view of the orders passed in the main appeal, the CMP is disposed of accordingly.

Cross-Objections No.146/2003:

In view of the above decision of the main appeal which has been allowed, there is no merit in the cross-objections which are dismissed.

October 24, 2005. (Deepak Gupta),
s. Judge.